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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/612,902	07/07/2003	Antonio Fontana	26828/GM/ps	4323

7590

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MODIANO & ASSOCIATI  
Via Meravigli, 16  
Milano, 20123  
ITALY

EXAMINER

BOMBERG, KENNETH

ART UNIT

PAPER NUMBER

3754

DATE MAILED: 06/03/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

10/612,902

Applicant(s)

FONTANA, ANTONIO

Examiner

Kenneth Bomberg

Art Unit

3754

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 07 July 2003.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-17 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-17 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 07 July 2003 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some \* c) ☐ None of:
- 1) ☒ Certified copies of the priority documents have been received.
  - 2) ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - 3) ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)                        | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftperson's Patent Drawing Review (PTO-948)                | Paper No(s)/Mail Date. _____  |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date <u>10-24-03</u> .  | 6) <input type="checkbox"/> Other: _____                                    |

## DETAILED ACTION

### *Drawings*

1. The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the:

Connection means being a plurality of slots and complementary ridges of claim 6,

Connection means being a side-fit coupling of claim 7,

Anchoring means being a heat-sealed portion according to claim 15;

Anchoring means being a ultrasound-sealed portion according to claim 16;

Dispenser formed monolithically with an end of the open bottom container of claim 17.  
must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will

be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

***Claim Rejections - 35 USC § 102***

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. Claims 1-5, 7, 9-10, 12-13, and 17 are rejected under 35 U.S.C. 102(b) as being anticipated by O'Meara (US 5,228,593).

In Figs. 1-7, O'Meara teaches of a container (Fig. 1), having a hollow body (13), mouth (covered by 35), cap (11), closure (27, 35), temporary coupling means (around 35), seat (25), connection means (39,41), neck (33) of dispenser, fixing means (29, 31), closed bottom (15), and means for anchoring the dispenser to the hollow body (frustoconical shoulder on body 13).

4. Claims 1-5, 6-10, 12-13 and 15-16 are rejected under 35 U.S.C. 102(b) as being anticipated by Soupletube (FR 2677334).

In Figs. 1-7, Soupletube teaches of a container (Fig. 1), having a hollow body (3), mouth (covered by 14), cap (2), closure (14), temporary coupling means (15), seat (in 24), connection means (16), neck (1) of dispenser, fixing means (25, 41, 42), and means

for anchoring the dispenser to the hollow body (frustoconical shoulder 40 at connection 43).

In Reference to Claims 15-16

In Fig. 1, the hollow body (3) can be seen connected to a frustoconical shoulder (40) of hollow body (3) via a connection point (43). These claims call for a the anchoring by a “heat-sealed portion” or an “ultrasound-sealed portion”. These are product by process limitations. Even though product-by-process claims are limited by and defined by the process, determination of patentability is based on the product itself. The patentability of a product does not depend on its method of production. If the product in the product-by-process claim is the same as or obvious from a product of the prior art, the claim is unpatentable even though the prior product was made by a different process. (see MPEP 2113).

5. Claims 1-5, 7, and 9-16 are rejected under 35 U.S.C. 102(b) as being anticipated by Golebiewsky (US 4,157,765).

In the figure, Golebiewsky teaches of a container (see figure), having a hollow body (1), mouth (covered by 5), cap (3), closure (5), temporary coupling means (6), seat (7), connection means (thread around 7), neck (2) of dispenser, fixing means (4), closed bottom (column 3, lines 49-54), and means for anchoring the dispenser to the hollow body (cylindrical annular socket in base 9 of neck 2).

In Reference to Claims 15-16

In Fig. 1, the hollow body (3) can be seen connected to a frustoconical shoulder (40) of hollow body (3) via a connection point (43). These claims call for a the anchoring by a “heat-sealed portion” or an “ultrasound-sealed portion”. These are product by process limitations. Even though product-by-process claims are limited by and defined by the process, determination of patentability is based on the product itself. The patentability of a product does not depend on its method of production. If the product in the product-by-process claim is the same as or obvious from a product of the prior art, the claim is unpatentable even though the prior product was made by a different process. (see MPEP 2113).

*Conclusion*

6. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. The remaining prior art listed on the attached Notice of Reference Cited have been included because they show frangible monolithic closures removable by a cap movement.


7. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Kenneth Bomberg whose telephone number is 571-272-4922. The examiner can normally be reached on Monday, Tuesday, Thursday and alternative Fridays.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael Mar can be reached on 571-272-4906. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Art Unit: 3754

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

K.B.



KENNETH BOMBERG  
PRIMARY EXAMINER